

THE HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,

vs.

MOTOROLA, INC., et al.,
Defendants.

MOTOROLA MOBILITY LLC, et al.,
Plaintiffs,

vs.

MICROSOFT CORPORATION,
Defendants.

Case No. C10-1823-JLR

DECLARATION OF CHRISTOPHER
WION IN SUPPORT OF
MICROSOFT'S SUBMISSION OF
EXTRINSIC EVIDENCE RE THE
MPEG LA – GOOGLE LICENSE

HEARING DATE:
Monday, January 28, 2012 at 1:30pm

I, Christopher Wion, hereby declare as follows:

1. I am an attorney at the law firm of Calfo Harrigan Leyh & Eakes LLP, one of the law firms representing Microsoft Corporation ("Microsoft") in the above-captioned matter, and have personal knowledge of the facts stated herein.

2. On January 23, 2013, the parties each submitted the identical email exchange among MPEG LA, Sony, and the members of the AVC Group from Spring 2004, attached as

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Ex. 3 to the Declaration of Lawrence A. Horn (Dkt. No. 641-3) and Ex. H to the Declaration of Samuel Brenner (Dkt. No. 643-2). The email string begins with a February 26 email from Mr. Horn, in which he notes that he has attached clean and red-lined “drafts of the AVC License.”

3. Microsoft has located two drafts of the AVC/H.264 License, which were produced during the course of discovery in this matter. Attached hereto as Exhibit 1 is a true and correct copy of the December 8, 2003 draft AVC Patent Portfolio License that Microsoft produced as MS-MOTO_1823_00002352302—2352331 (denominated in the footer as version “2”). Section 8.3 in this draft does not include any reference to “Affiliates.” It reads:

Upon full execution of this Agreement, Licensee agrees to grant a worldwide, nonexclusive license and/or sublicense (commensurate to the scope of the licenses which Licensee has selected hereunder) under any and all AVC Essential Patent(s) that Licensee has the right to license and/or sublicense, to any Licensor or any sublicensee of the Licensing Administrator desiring such a license and/or sublicense on fair and reasonable terms and conditions. For purposes of this Section 8.3 only, the Licensors’ per patent share of royalties which are payable pursuant to Article 3 of this Agreement shall be presumed to be a fair and reasonable royalty rate for the aforementioned license and/or sublicense to be granted by the Licensee.

The date of version 2 of the License can be confirmed by the email that accompanied it, produced by Microsoft as MS-MOTO_1823_00002352300—2352301, a true and correct copy of which is attached hereto as Exhibit 2.

4. Attached hereto as Exhibit 3 is a true and correct copy of the March 26, 2004 red-lined draft AVC Patent Portfolio License that Microsoft produced as MS-MOTO_1823_00002352686—2352715 (denominated as version “4”, with red-lined changes to version “3”). This red-lined draft shows that the phrase “or its Affiliates, if any” was added to Section 8.3 in version 3 and then changed to “and its Affiliates, if any” – the final language – in version 4. It reads:

DECLARATION OF CHRISTOPHER WION - 2

Upon full execution of this Agreement, Licensee agrees to grant a worldwide, nonexclusive license and/or sublicense (commensurate to the scope of the licenses which Licensee has selected hereunder) under any and all AVC Essential Patent(s) that Licensee ~~<or>~~ and its Affiliates, if any, ha~~s~~ ve the right to license and/or sublicense, to any Licensor or any sublicensee of the Licensing Administrator desiring such a license and/or sublicense on fair and reasonable terms and conditions. For purposes of this Section 8.3 only, the Licensors' per patent share of royalties which are payable pursuant to Article 3 of this Agreement shall be presumed to be a fair and reasonable royalty rate for the aforementioned license and/or sublicense to be granted by the Licensee.

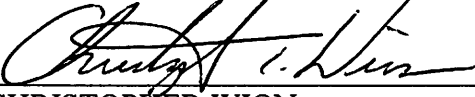
The date of the version 3-4 red-lined draft of the License can be confirmed by the email that accompanied it, produced by Microsoft as MS-MOTO_1823_00002352653—2352654, a true and correct copy of which is attached hereto as Exhibit 4.

5. Section 8.3 of the Google License (Horn Decl., Ex. 1) reads:

Upon full execution of this Agreement, Licensee agrees to grant a worldwide, nonexclusive license and/or sublicense (commensurate to the scope of the licenses which Licensee has selected hereunder) under any and all AVC Essential Patent(s) that Licensee and its Affiliates, if any, have the right to license and/or sublicense, to any Licensor or any sublicensee of the Licensing Administrator desiring such a license and/or sublicense on fair and reasonable terms and conditions. For purposes of this Section 8.3 only, the Licensors' per patent share of royalties which are payable pursuant to Article 3 of this Agreement shall be presumed to be a fair and reasonable royalty rate for the aforementioned license and/or sublicense to be granted by the Licensee.

I swear under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of January, 2013 in Seattle, Washington.


CHRISTOPHER WION

CERTIFICATE OF SERVICE

I, Susie Clifford, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 25th day of January, 2013, I caused the preceding document to be served on counsel of record in the following manner:

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8 DATED this 25th day of January, 2013.

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____ s/Susie Clifford
Susie Clifford

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